The Large Public Power Council

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Office of Policy and International Affairs
U.S. Department of Energy
Room 1E190
1000 Independence Avenue, S.W.
Washington, D.C. 20585

Attention: *Comments on DOE's Proposed General Guidelines for Voluntary GHG Reporting*

Dear Mr. Friedrichs:

The Large Public Power Council (LPPC) respectfully submits these comments on DOE's proposed revised general guidelines for the Voluntary Reporting of Greenhouse Gases Program (hereinafter "the 1605(b) Program). 68 Fed. Reg. 68204 (Dec. 5, 2003) (hereinafter "the proposed guidelines").

LPPC is an association of 24 of the largest public power systems in the United States. LPPC members directly or indirectly provide reliable, affordably priced electricity to most of the 40 million customers served by public power. We own and operate over 44,000 megawatts of generation and approximately 26,000 circuit miles of transmission lines. LPPC member utilities and public power agencies are located in states and territories representing every region of the country. In addition, member utilities own and operate a diverse portfolio of fossil, nuclear, hydropower, and other renewable energy sources that reflect the national energy mix. LPPC members are fundamentally different from other electric utilities. First, we are governed and supervised locally, and second, our performance directly affects our ratepayers and our communities rather than shareholders.

As you aware, LPPC and its members have been active participants in the development and implementation of the Administration's climate policies. LPPC and its members not only have participated in the process of enhancing the 1605(b) Program, they also have participated, through the Electric Power Industry Climate Initiative (EPICI), in the development of a Climate VISION program for the nation's power sector.

LPPC has found it useful to work through EPICI to contribute to the development of the Administration's climate program. EPICI has filed substantial comments on revisions to the 1605(b) Program. While the EPICI comments generally reflect many of the views of LPPC, LPPC and its members have identified several key policy issues on which it intends to make additional comments in order to highlight positions of substantial importance to LPPC. In addition, LPPC supports the comments filed by the American Public Power Association (APPA) on the proposed revisions to the 1605(b) Program.

As a general matter, LPPC supports the effort to enhance the 1605(b) Program. The 1605(b) Program should be an effective and credible mechanism through which companies can report and verify their emissions and reductions. Ideally, companies should be able to track the progress of their voluntary mitigation efforts through the enhanced 1605(b) Program. As discussed below, the proposed guidelines generally point in this direction, but modifications will be necessary in order to make it cost-effective for companies to participate on a voluntary basis.

The comments that follow should be seen as the first installment of LPPC's input on this guideline development process. LPPC looks forward to working with DOE on reviewing the proposed General and Technical Guidelines as a full package.

Finally, the comments provided below only address the 1605(b) Program. They are not intended to provide LPPC's views or positions on any possible regulatory approaches to addressing GHG emissions.

I. The comprehensiveness of the reporting requirements entailed in the proposed guidelines is overly burdensome and unnecessary for a voluntary program.

LPPC commends DOE and its partner agencies for the enormous effort that went into developing the proposal. It is evident that touchstone of the revisions is "comprehensiveness." DOE's primary objectives appear to be: (1) to encourage organizations to undertake a sweeping self-examination in which they tally up all of their emissions and their effects on the emissions of others; and (2) to provide participating organizations a visible platform to report this information to interested members of the public. However, there are two drawbacks with DOE's approach. First, the breadth of the proposed entity-wide reporting requirements is such that many organizations will find it cost-prohibitive to volunteer for the program.[1] The strong emphasis of the proposed guidelines on comprehensive emissions reporting will count for little if reporting is so costly that entities are deterred from participating.

Second, DOE appears to have concluded that its unwavering emphasis on entity-wide reporting means it necessarily must exclude, or at least discourage, reporting and registration of emission reduction projects, whether by participating organizations or through offset transactions by non-participating organizations. This bias against emission reduction projects is particularly unfortunate because most of the voluntary emission reducing activity currently occurring is occurring on a project basis. Thus, if the final guidelines were to discourage project-based reporting, DOE would miss an opportunity to encourage more voluntary emission reductions, more innovation, and more market-friendly approaches to mitigation. Encouragement of entity-wide reporting and encouragement of high quality emission reduction projects need not be mutually exclusive.

Many of the comments below are aimed at increasing the flexibility of the guidelines so that they encourage greater participation and more emission reduction projects.

II. LPPC supports the proposed entity definition, subject to modifications to the scope of emissions sources and sinks covered in entity-wide reports.

LPPC members support DOE's proposed approach to defining the reporting entity, subject to modifications to other parts of the guidelines. Any proposed definition of a reporting entity must allow for any "legally-distinct" company, plant or group of business units to define itself as an entity. This approach will tend to encourage companies to report at the "highest meaningful level of aggregation." Id., at p. 68208, c.1. More prescriptive approaches are unnecessary and, indeed, may discourage participation. However, LPPC emphasizes that this approach to entity definition needs to be tied to greater flexibility for the entity in defining its operational boundaries for reporting. This issue is discussed in greater detail below.

III. An entity should be able to select operational boundaries for reporting that encompass an individual, self-contained business unit.

A difficulty with the proposed guidelines is that they require an entity to report on all sources of direct and indirect GHG emissions it owns. This would present problems for entities that are complex enterprises consisting of multiple business units, particularly if those units are not themselves "legally-distinct" and therefore cannot be disaggregated

[1] While the enhanced program seeks voluntary participation, the comprehensive nature of the program would impose reporting requirements of unnecessary, and ultimately cost-prohibitive, breadth. Typical large public power systems with significant coal generation would be required to report 99.9 percent of their GHG emissions – only to earn the uncertain benefit of having "registered" reductions. DOE itself has acknowledged this fact in the proposal. Id., at p. 68211, c. 3.

as individual "entities." For example, some public power entities are structured as agencies or departments of municipalities. To the extent that these power departments are not "legally-distinct," they could register reductions only if the municipality itself was the reporting "entity" and was prepared to report not only on emissions related to power generation and purchases, but also emissions associated with various other, distinct operations of municipal government – ranging from wastewater treatment to police car fleets to office buildings. LPPC believes such comprehensive reporting adds very little value to the integrity of the program – particularly given that the vast majority of the emissions will be associated with the power generation activities – and that the added burden of such reporting cannot be justified and is likely to chill participation.

To accommodate such complex enterprises as public power systems within municipalities, an "entity" should have the discretion to report only on one or more of its individual business or operational units, so long as that it can demonstrate that there is no risk that units within the reporting boundaries can shift emissions and activities to units outside the reporting boundaries. LPPC members believe this approach is more workable and yet would still offer a comprehensive view of an entity's emissions status.

IV. The scope of emissions sources and sinks that entities must cover in entity-wide emissions inventories should be reduced in order to encourage cost-effectiveness and participation.

As discussed above, a fundamental concern with the proposed guidelines is the breadth of the emissions inventory requirements for entity-wide reports. Under the guidelines as proposed, an entity would have to report all of its direct and indirect emissions of all six GHGs. Moreover, entity-wide reporters would be required to calculate and report carbon stock changes at all of the terrestrial sinks they own. See Id., at §300.6.

Meeting these requirements would be cost-prohibitive for many companies, deterring participation in an enhanced 1605(b) Program. To avoid this outcome, the guidelines should draw a clearer line between significant and insignificant sources and types of emissions for individual sectors. For example, the great proportion of GHG emissions for electric power generators are CO_2 emissions resulting from fossil-fired generating facilities. Power generators should not have to incur the costs of measuring and tracking other types of relatively insignificant emissions related to their operations.

In addition, entities that own land but are not actively involved in land management should not have to calculate and report carbon stock changes. Requiring reporting on all sinks would oblige a company to start measuring and accounting for changes in the size of the full range of types of trees and plants on each acre of land it owns. If a company is not managing land for sequestration purposes, it should not be required to perform these calculations as part of its entity-wide report.[2]

The breadth of the reporting requirements in the proposed guidelines might be somewhat more manageable if entities could exclude their insignificant emissions through a reasonable *de minimis* provision. However, the *de minimis* threshold set forth in the proposed guidelines – the lesser of 3 percent or annual emissions of 10,000 tons of CO_2-equivalent – is unreasonably low. Id., at §300.6(e). Even the preamble acknowledges that many power companies would be forced to tally up 99.9% of their emissions in order to have the right to register their reductions. Id., at p. 68211, c. 3.

LPPC members recommend that DOE consider two alternative approaches to distinguishing between significant emissions, which should be reported, and insignificant emissions, which entities would not be obliged to measure and report. One alternative is the suggestion made by a number the individuals at DOE's January 12, 2004 public workshop that the guidelines set the *de minimis* threshold at 5 percent. A 5 percent threshold would ensure that reporting is comprehensive and provides meaningful information, while making reporting costs more reasonable.

An alternative approach would identify, for particular sectors and organizational types, what should be deemed "significant" emissions. For example, the guidelines could provide that entities in the electricity sector are obliged to include in their entity-wide reports 100 percent of their CO_2 emissions from power generating facilities; reporting on emissions from other sources or activities would be optional or subject to a 5 percent *de minimis* threshold.

VI. LPPC supports the availability of a wide range of methods for calculating reductions, but believes the proposed approach to calculating avoided emissions should be modified.

LPPC and its members generally support DOE's proposed approach to calculating emission reductions in that it allows entities to choose from a range of calculation methods and, if necessary, to use multiple methods for one report. In particular, LPPC supports the availability of an intensity approach, which should permit even those power companies with growing output to demonstrate their progress in increasing their efficiency on an emissions/kWh basis. However, LPPC will reserve final judgment until release of the Technical Guidelines, which presumably will provide more detail on how intensity may be calculated under different circumstances. LPPC looks forward to working with DOE on these issues.

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[2] Note that the situation described above is distinct from an offset context – in which the reporting entity enters into an agreement with another entity to register sequestration achieved on land owned and managed by the latter. In such circumstances, it is understood that it would be necessary to measure and report the amount of sequestration achieved in order to register offset reductions.

LPPC has concerns about the approach of the proposed guidelines to determining "avoided emissions." The proposed approach is potentially punitive to current owners of pre-existing low- and non-emitting energy generation. LPPC and its members rely much more heavily on renewable sources of energy generation than the utility sector as whole – in 2000, the proportion of LPPC electricity generated from renewable sources (14.3 percent) was more than 50 percent greater than the renewable proportion for the power sector on average (8.5 percent). Energy Information Administration, Annual Energy Review (2001). LPPC's share of non-hydro renewable generation is also much higher than the national average for the power sector. Under the proposed guidelines, an owner of a non-emitting or low-emitting source may not report and register "avoided emissions" unless it actually increases sales of electricity from the source. Id., at §300.8(b)(4)(ii). Moreover, DOE has explained that if a reporter owns a low- or non-emitting energy facility and decreases its output, then it must calculate and report the decreased output in terms of *increased emissions*.

This approach does little to encourage low- and non-emitting energy generation and may even discourage it. Compared to other types of generation, renewable and other low- and non-emitting energy has very high operating costs. Yet, under the proposed approach, owners of renewable energy receive no recognition for continuing to operate their renewable energy facilities at current levels, even though such owners incur substantial costs to continue the *status quo*. Indeed, individual LPPC members will incur upwards of $250 million of costs for license extension and related reliability/capital improvements of re-license their nuclear facilities – which, for some members, is an investment motivated at least in part by concerns about sustaining zero-emitting energy alternatives in their generation portfolios. Yet, the proposed guidelines fail to provide any positive recognition for efforts to sustain renewable energy output. Moreover, they effectively would penalize any decline in renewable energy output, even though output declines – including very sizable declines – can occur at low- or non-emitting energy facilities because of circumstances beyond the owner's control, *e.g.,* droughts, unplanned nuclear plant outages, depletion of landfill methane at methane-to-energy facilities, *etc.*

In other words, the current approach disadvantages those entities that were willing to incur the cost and risk of investing in and operating these facilities – and have been contributing "avoided emissions" for years. Under the proposed guidelines, these entities would have to record potentially enormous emissions *increases* as yearly output fluctuates and as the useful life of the facilities comes to an end.

LPPC recognizes that the treatment of current low- and zero-emitting energy presents complex issues. Members will be looking for opportunities to meet with DOE staff to discuss alternative workable approaches.

VII. The proposed guidelines are correct to encourage, rather than require, independent verification.

LPPC supports DOE's approach respecting independent verification. LPPC agrees with DOE that entities' transparent use of emissions calculation methodologies developed under the Technical Guidelines should provide adequate assurances of credibility. Indeed, note that, entities in the electricity sector will be calculating the largest proportion of their emissions – CO_2 emissions from generation – from CEMS data reported to EPA, energy production data reported to DOE/EIA, and similar well-established data. Requiring independent verification of such data – which is already subject to rigorous measurement and verification procedures – is unnecessary and could deter participation.

VIII. The proposed guidelines should not prohibit registration of qualifying pre-2003 reductions, nor preclude continued use of a pre-2002 baseline.

The preamble to the proposed guidelines explains that entities would be prohibited from registering reductions achieved before 2003, even if those reductions are recalculated in accordance with the revised methods. Id., at p. 68206, c. 2. The proposal also indicates that even entities that established a pre-2002 baseline under the existing 1605(b) Program would have to revise it for use under the revised program. Id., at p. 68210, c. 3.

In the view of LPPC and its members, there is no reason why the guidelines should prohibit entities from maintaining a pre-2003 baseline and registering reductions achieved prior to 2003. Even if DOE wants the program to "focus on current and future actions," it is not necessary to penalize companies that achieved real, measurable reductions prior to 2003 by prohibiting them from even registering those reductions in the new database. LPPC is concerned that this approach sets a precedent under which DOE could take administrative action at any time to erase even post-2003 registered reductions.

If DOE deems it important to make distinctions between pre-2003 reductions and reductions achieved in 2003 and afterwards, the Department can adopt less punitive approaches. DOE, for instance, could authorize registration of pre-2003 reductions, but separately earmark them in the database.

IX. LPPC supports DOE's proposed approaches to determining which entity may register reductions.

Though LPPC has a number of concerns about DOE's proposed approach to calculating "avoided emissions," LPPC supports the method proposed by DOE for determining which entity has the right to register "avoided emissions." DOE proposes to allow the owner of the non-emitting or low-emitting source to register the avoided emissions, rather than the purchaser of electricity from that source. Id., at 68212, c 2.

LPPC and its members believe this is the correct approach. Given that DOE intends to "ensur[e] . . . that recognition for reductions is given to those entities *primarily responsible* for those reductions," recognizing ownership in the facility owner rather than the purchaser is more appropriate because it is the facility owner that makes the investments necessary to produce the non-emitting or low-emitting energy. Id. (emphasis added). The enhanced 1605(b) Program should reward and encourage those companies that incur the generally higher costs and risks involved in investing in low-emitting or zero-emitting energy. It will not be possible to diversify the U.S. energy system without such investments. Moreover, the proposed approach tracks existing State renewable energy credit trading programs, under which the facility owner is the entity presumptively entitled to credits.

Another potential ownership issue arises with respect to "indirect" emission reductions – *i.e.*, reductions associated with implementation of energy efficiency measures. Here, LPPC is satisfied with the approach suggested in the proposed guidelines. As LPPC interprets the guidelines, entities would be required report their indirect emissions and reductions separately from their direct emissions and emission reductions. The database then will record these different types of reductions separately. Id. Accordingly, DOE does not intend to have the guidelines assign exclusive ownership over indirect reductions to either the energy user or the energy generator. This leaves ownership to be resolved, if desired, through private contracts.

Another related area of LPPC concern are the conditions and requirements for registering GHG reductions achieved through demand-side management projects and other such off-system energy conservation initiatives. LPPC looks forward to working with DOE, particularly as DOE moves forward with the development of Technical Guidelines.

X. Offsets

LPPC and its members see offset transactions as playing a critical role in efforts to meet the President's intensity goal. Reporting entities should have the ability to enter into arrangements with other entities to achieve reductions wherever reductions can be achieved at lowest cost. Policies that encourage offset transactions also encourage innovation. LPPC is pleased to see that the proposed guidelines at least broadly authorize such arrangements. Id., at §300.7(c)

However, LPPC believes the offset provisions could be improved. First, the proposed guidelines provide that an entity may only register reductions achieved by a third party if the reductions "were calculated using the same method(s) that would have been applicable if the third party that achieved the emission reduction[s] had chosen to report [them] directly to DOE." Id. This implies that if the third party would meet the "large emitter" definition under the guidelines, the third party first would have to prepare an entity-wide emissions inventory and then could transfer as offsets only its net, entity-wide reductions.

This approach – which would preclude most transfers of project-based reductions – is problematic for a number of reasons. As many companies at the January 12 public workshop observed, the current private U.S. emissions trading market consists almost entirely of trades of project-based reductions. By discouraging project-based transactions, the proposed guidelines would miss an opportunity to encourage innovation in GHG mitigation.

LPPC also observes that DOE is soliciting comment in the preamble on a number of issues regarding offset transactions. Id., at p. 68213, c. 1. First, DOE requests comment as to whether the guidelines should allow a non-reporting entity to "enter into agreements permitting some of its emission reductions to be registered by one entity and the remainder by one or more other entities." Id. LPPC and its members believe non-reporting entities should have this ability. Some number of companies likely will determine that its infeasible to participate in the 1605(b) Program on an entity-wide reporting basis, yet could develop high quality projects with real emission reductions. Authorizing such companies to sell reductions to multiple buyers will promote liquidity, thereby making it possible for the 1605(b) Program to spur greater levels of reductions at lower cost.

Finally, DOE solicits comment as to whether a reporting entity that seeks to register another entity's reductions should be required to "demonstrate that it helped finance or manage the achievement of the emission reductions achieved by the other entity." Id. Presumably, DOE's is looking for ways to ensure that offsets are not "anyway" reductions. However, if the "seller" of an offset has complied with all of the guidelines' requirements for calculating reductions, it is LPPC's view that such compliance provides adequate assurances that the project's reductions are not "anyway" tons. Requiring the further demonstration suggested by the preamble is not necessary.

Furthermore, requiring a showing that the "buyer" actually financed or managed the project could unintended consequences – it could preclude many *good* offset transactions. Some offset "sellers" incur up-front costs in developing a project in contemplation of a *future* buyer. Yet, under the rule suggested in the preamble, the permissibility of such an arrangement is not clear. In addition, the rule might be read to prohibit any "secondary" purchases of offsets. For example, if entity A registered a third-party reductions and then wants to re-sell them to entity B is the re-sale subject to the offset provisions? If so, then the rule suggested in the preamble would preclude such a transaction because entity B could not demonstrate that it financed or managed the original reduction activities.

LPPC appreciates DOE's efforts to accommodate offsets in the enhanced 1605(b) Program. However, for the reasons discussed above, DOE should consider further refinements to the guidelines to the make the enhanced Program more market-friendly.

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LPPC and its members commend DOE and its partner agencies for the efforts they have put into the proposed guidelines. LPPC looks forward to working with the Administration on modifications that can help make the enhanced 1605(b) Program a vital element of the President's climate policies.

Sincerely,

Bill Neal

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